

# **EXHIBIT B**

## **(Part 2)**

Vecchione - Cross - Demartini

77

1 THE WITNESS: Yes, Judge.

2 MR. DEMARTINI: And I think we'll have  
3 a stipulation as to the buck sheets.

4 MR. BARKET: Yes, Judge. I think  
5 we'll stipulate to the facts that he was  
6 offered two to four before indictment. He was  
7 indicted. The minimum offer then was six to  
8 life. Then he was indicted again and the law  
9 speaks for itself. The minimum was fourteen  
10 to life and he spoke to Mr. Vecchione.

11 MR. DEMARTINI: I think at some point  
12 we'll put in both buck sheets.

13 MS. DONHAUSER: We'll have to review  
14 that. I don't know --

15 MR. DEMARTINI: The first one shows  
16 the criminal court --

17 MS. DONHAUSER: -- the last part --

18 MR. DEMARTINI: -- history, where the  
19 two to four offer is made and then the  
20 subsequent offers on the supreme court buck  
21 sheets.

22 Q. Now in preparing for the actual trial,  
23 People v. Cabeza and Marshall, as Arnold  
24 Stober a witness in that case?

25 A. Yes.

Vecchione - Cross - Demartini

78

1 Q. And had you entered into a cooperation  
2 agreement with Arnold Stober?

3 A. Yes.

4 MR. BARKET: Judge, to save time, I'll  
5 stipulate that the other agreements were -- if  
6 that's where you're going, I'll stipulate the  
7 other agreements were turned over.

8 MR. DEMARTINI: Your Honor, I would  
9 ask that they be marked as Government Exhibits  
10 4 and 5.

11 (Government's Exhibit 4 and 5 marked for  
12 identification)

13 Q. Did you also have an agreement with  
14 Mr. Arnold Stober's brother, John Stober?

15 A. Yes.

16 Q. And was he also a witness against  
17 Cabeza and Marshall?

18 A. Yes.

19 Q. I would show you 4 and 5. Are those  
20 -- do you recognize those two agreements?

21 A. Yes.

22 Q. And were those turned over to  
23 Mr. Harrison and Mr. London, the two attorneys  
24 on the Cabeza and Marshall trial?

25 A. Yes.

Vecchione - Cross - Demartini

79

1 Q. Did you have a witness -- and did  
2 these two individuals testify on the direct  
3 case?

4 A. Yes.

5 Q. Was there a witness by the name of  
6 Raymond Rivera who testified on the direct  
7 case?

8 A. Yes.

9 Q. What was his significance in the  
10 Marshall-Cabeza trial?

11 A. He was one of the witnesses who was  
12 outside the store and saw -- I believe saw  
13 them leaving the store.

14 Q. Was he able to identify him --  
15 actually make an identification of Mr.  
16 Marshall?

17 A. I think he was; yes.

18 Q. Were any promises made to him?

19 A. There were -- I believe that he was in  
20 jail already. I think I indicated that I  
21 would write some sort of letter on his behalf.  
22 I think I was going to move his family and  
23 there may have been something else but I don't  
24 recall.

25 MR. DEMARTINI: I would ask that the

Vecchione - Cross - Demartini

80

1 following be marked as Government Exhibit 6.  
2 (Government's Exhibit 6 marked for  
3 identification)

4 Q. Mr. Vecchione, do you recognize  
5 Government Exhibit 6?

6 A. Yes, I do.

7 Q. And what is it?

8 A. These are my notes as to what I was  
9 going to do on behalf of Raymond Rivera and I  
10 know that --

11 Q. And what did you indicate that you  
12 were going to do?

13 A. A letter for work release, because I  
14 believe he was in jail already, move him, for  
15 his safety, once he got out and move his  
16 family for safety. And I have written on here  
17 Giglio, which means that I would have put it  
18 in the folder that I would have turned over to  
19 the defense attorneys with regard to material  
20 that would fall under Giglio.

21 MR. DEMARTINI: And I would mark the  
22 following as Government Exhibit 7.

23 (Government's Exhibit 7 marked for  
24 identification)

25 Q. Mr. Vecchione, do you recognize what's

Vecchione - Cross - Demartini

81

1       been marked Government Exhibit 7?

2       A.     Yes.

3       Q.     And what do you recognize that to be?

4       A.     This is a receipt that I prepared for  
5       Mr. Harrison when I turned over Rosario  
6       material, criminal records of various  
7       witnesses in the case, and Giglio material  
8       with regard to Arnold Stober, John Stober and  
9       Raymond Rivera.

10           And the second sheet is also a  
11       receipt. It's dated two days later. At that  
12       point, I provided Mr. Harrison with two more  
13       pieces of Rosario material and criminal  
14       records of one of the victims in the case and  
15       Arnold Stober.

16           MR. BARKET: What number is that?

17           THE WITNESS: 7.

18           Q.     As you got closer to the trial, did  
19       you prepare yourself and ultimately for the  
20       Court, a witness list or witness lists of the  
21       people that you intended to call at trial?

22           A.     I believe that we did. I don't know  
23       that I physically wrote it but I think that ~~we~~  
24       -- I know we did. I think it might have been  
25       Sean Courtney who wrote -- actually wrote out

Vecchione - Cross - Demartini

82

1 the witness list.

2 Q. And when you were doing this, was  
3 Mr. Murphy on your witness list?

4 A. No.

5 MR. DEMARTINI: And I would ask that  
6 the following be marked as Government Exhibits  
7 8-A, B, and C.

8 (Government's Exhibit 8-A, B and C marked for  
9 identification)

10 Q. Do you recognize A, B and C, number 8-  
11 A, 8-B and 8-C?

12 A. A is what appears to be the witness  
13 list. B is a potential witness list, which I  
14 wrote out. A, I did not write. And C, it  
15 says witnesses and it appears as if these are  
16 the witnesses that we were intending to call.  
17 And I did not write C either.

18 Q. Now in any of those lists does the  
19 name of Ciscro Murphy appear?

20 A. No.

21 Q. When did you ultimately decide that  
22 you were going to use Murphy as a witness in a  
23 case?

24 A. On the 17th, after I spoke to him in  
25 the -- in that little room on the fourth

Vecchione - Cross - Demartini

83

1 floor.

2 THE COURT: You just -- so help me.

3 Was this when -- this was just before he was  
4 called?

5 THE WITNESS: Yes, sir.

6 THE COURT: But you had brought -- I  
7 assume you had brought him over with the  
8 notion --

9 THE WITNESS: I was hoping that he  
10 would --

11 THE COURT: That he would --

12 THE WITNESS: -- remember and that he  
13 would testify.

14 THE COURT: So, you -- I mean,  
15 basically, you had just -- you had made the  
16 decision, essentially, to use him subject to  
17 your, you know, having comfort as to what he  
18 would say at some earlier point.

19 THE WITNESS: Yes, absolutely.

20 Q. Now is it fair to say that on March 11  
21 and March 12, 1993 while the trial was  
22 progressing, that would be the Thursday and  
23 Friday before the following Wednesday when  
24 Murphy testifies, that you were busy with your  
25 direct case?

Vecchione - Cross - Demartini

84

1 A. Yes.

2 Q. And in your case, Mr. Murphy testified  
3 solely as a rebuttal witness.

4 Is that correct?

5 A. Yes.

6 Q. On the subsequent case --

7 A. Excuse me.

8 Q. -- after he signed his cooperation  
9 agreement, was he a primary witness in the  
10 first and second trials that Mr. Hollman  
11 testified --

12 A. I believe so; yes.

13 Q. -- excuse me, tried?

14 A. Yes.

15 THE COURT: Could you refresh my  
16 recollection?

17 THE WITNESS: Yes, sir.

18 THE COURT: I looked at the transcript  
19 before when the case was reassigned to me and  
20 we had a hearing -- oral argument and I  
21 decided that I needed to have an evidentiary  
22 hearing.

23 THE WITNESS: Yes, sir.

24 THE COURT: So, what I don't remember  
25 from the transcript, did anybody ask, either

Vecchione - Cross - Demartini

85

1 you or Mr. Harrison, ask Ciscro Murphy what he  
2 faced, what his exposure was on the pending  
3 charges? Do you recall?

4 THE WITNESS: I don't recall. I don't  
5 think so but I don't recall it. I don't  
6 recall with 100 percent certainty, Judge.

7 MR. BARKET: In the Cabeza trial,  
8 Judge?

9 THE COURT: Yes.

10 MR. BARKET: No.

11 MS. DONHAUSER: What's the question  
12 again because I have -- whether anybody asks  
13 whether he could be, like, a mandatory  
14 persistent or something?

15 THE COURT: What penalty do you face  
16 on these charges, which is the traditional  
17 question that one would ask of a cooperating  
18 witness who you knew had pending charges.

19 MR. BARKET: No.

20 MS. DONHAUSER: I believe -- well, I  
21 think actually Harrison --

22 MR. BARKET: He doesn't ask him about  
23 the penalties. I'll take a look. I could be  
24 wrong.

25 MS. DONHAUSER: Okay. We can continue

Vecchione - Cross - Demartini

86

1 and I'll look.

2 THE COURT: Yes, that's okay.

3 BY MR. DEMARTINI:

4 Q. At the conclusion of the Cabeza and  
5 Marshall trial, did you speak with the jurors?

6 A. No.

7 Q. So you don't have any direct  
8 information from any of the jurors as to why  
9 they came to the verdict that they came to?

10 A. No. I mean, yes, I do not have --

11 Q. Okay.

12 Well, but you wrote a letter to the  
13 parole board, so you must have had an opinion.

14 THE WITNESS: That wasn't the  
15 question, Judge. It was what -- the question  
16 was --

17 Q. Did you have any firsthand information  
18 from any of the jurors as to how they came  
19 about with their verdicts and the Cabeza and  
20 Marshall trial?

21 A. No.

22 Q. So your letter to the parole board was  
23 not based upon any information you got from  
24 jurors?

25 A. No.

Vecchione - Cross - Demartini

87

1 MS. DONHAUSER: Judge, I have an  
2 answer to your question. It was very brief.  
3 Mr. Harrison asked:

4 "Question: If you were convicted, "  
5 meaning of the cases -- of the open cases,  
6 "would you become a predicate felon?

7 "Answer: That's if I was convicted.

8 "Question: Yes, if --

9 "Answer: Yes."

10 But there's no discussion of the exact  
11 number of years he could receive.

12 BY MR. DEMARTINI:

13 Q. I would show you what has been  
14 previously marked as the Petitioner's Exhibit  
15 10.

16 A. Yes.

17 Q. Both sides of that top page.

18 A. Yes.

19 Q. Is that your handwriting on either of  
20 the two pages?

21 A. No.

22 Q. Do you recognize the handwriting?

23 A. No, I don't.

24 Q. Looking at those two pages, does it  
25 indicate that you had information or someone

Vecchione - Cross - Demartini

88

1 in your trial cadre gathered information about  
2 both the gun case that Ciscro Murphy had  
3 pending and the rape case?

4 A. Yes.

5 Q. Looking at that, would you be able to  
6 conclude whether or not at some point you had  
7 in your possession both the gun case and the  
8 rape case?

9 A. Yes.

10 Q. Excuse me, what was your response?

11 A. I'm sorry, say that -- ask the  
12 question again. I was reading.

13 Q. Looking at those two pages of notes,  
14 would that allow you to tell us whether or not  
15 you had in your possession at some time before  
16 you went to trial on the Cabeza and Marshall  
17 case, whether or not you had both Mr. Murphy's  
18 gun case that was pending and his rape case  
19 that was pending?

20 A. Yes.

21 Q. The files in both cases?

22 A. Yes.

23 Q. And is it your answer that you had  
24 both of them?

25 A. At some point, we had both of them;

Vecchione - Cross - Demartini

89

1 yes.

2 Q. I believe you said you tried the  
3 Cabeza case with a co-counsel.

4 A. Yes.

5 Q. And that was who?

6 A. Sean Courtney.

7 MR. DEMARTINI: I would mark the  
8 following as Government Exhibit 9, I believe  
9 we're up to.

10 (Government's Exhibit 9 marked for  
11 identification)

12 MR. BARKET: You're doing numbers,  
13 also?

14 MR. DEMARTINI: Yes.

15 MR. BARKET: Okay.

16 Q. Do you recognize that note?

17 A. Yes.

18 Q. And in whose handwriting is that note?

19 A. Sean Courtney.

20 Q. What does that refer to?

21 A. This is a note that was given to an  
22 assistant; it appears as if an assistant from  
23 the orange zone and it refers to -- excuse me,  
24 neither he nor I having spoken to a deputy  
25 chief in the sex crimes bureau with regard to

Vecchione - Cross - Demartini

90

1 Murphy's pending sex crimes case to make a  
2 package offer; the gun and the sex crimes  
3 case.

4 Q. And when is that date?

5 A. April 19.

6 Q. And that would be April 19 of what  
7 year?

8 A. '93.

9 Q. And does it make any reference to the  
10 deputy that you would be speaking to in the  
11 sex crimes unit?

12 A. Yes, it says Melendez and I know that  
13 to be Suzanne Melendez.

14 Q. She was a deputy in the sex crimes  
15 unit at the time?

16 A. Yes.

17 Q. Now, the two pending cases that Murphy  
18 had, the gun case and the sex crime or the  
19 rape case, were either of those two cases  
20 cases that would have been assigned to your  
21 trial cadre?

22 A. No.

23 Q. Where was the sex crimes case?

24 A. In the sex crimes bureau.

25 Q. And what about the gun case? Where

Vecchione - Cross - Demartini

91

1 was that being handled?

2 A. It was in the orange zone, which is  
3 one of the five trial bureaus that handles  
4 supreme court cases.

5 MR. DEMARTINI: Your Honor, at this  
6 time I would like to have -- what I have done,  
7 it's the complete outside folders of those two  
8 cases with their notations. We have also  
9 xeroxed it. So, we can -- I'll show it to  
10 Mr. Barket. He can check that it is a correct  
11 xerox.

12 MR. BARKET: I'm sure they copied what  
13 was there, Judge.

14 THE COURT: Okay.

15 (Government's Exhibits 10 and 11 marked for  
16 identification)

17 Q. I'll show you what's been marked as  
18 Government Exhibits 10 and 11, these -- 10 and  
19 11 being xerox copies of these two folders.

20 If you would look -- what are those  
21 folders? Can you tell us what the folders  
22 are?

23 A. These are the supreme court -- these  
24 are the felony folders that we were using  
25 back, I guess, 1992, 1993 until we changed the

Vecchione - Cross - Demartini

92

1 outside of the folder to include color coding  
2 for each of the zones.

3 Q. And in particular, what cases do those  
4 two folders refer to?

5 A. Ciscro Murphy, Ciscro Murphy; both  
6 Ciscro Murphy.

7 Q. And would one be his gun case and the  
8 other be the sex crimes case; the rape case?

9 A. Yes.

10 Q. Referring to the folder that's  
11 indictment 1365/93, if you could look at the  
12 page that represents the inside flap.

13 A. Yes.

14 Q. Is there a note that is dated April  
15 22, 1993?

16 A. Yes.

17 Q. And what does that note state?

18 A. It says, "Spoke to M. Vecchione. Okay  
19 to give better plea offer. Defendant helped  
20 M. Vecchione." I can't read the last word or  
21 two. And it says -- and it's initially SM.

22 Q. Now, do you know some -- who would be  
23 SM at that time in the sex crimes bureau?

24 A. Suzanne Melendez.

25 Q. And the date again is?

Vecchione - Cross - Demartini

93

1 A. April 22.

2 Q. And that would be before or after you  
3 completed the trial in Cabeza and Marshall?

4 A. After.

5 MR. DEMARTINI: The rest of it  
6 certainly speaks for itself and we'll direct  
7 our arguments to it.

8 Q. Now with respect to our file on the  
9 sex crimes case --

10 A. That's 12156?

11 Q. That's correct.

12 MS. DONHAUSER: No.

13 MR. BARKET: No.

14 THE WITNESS: No?

15 Q. I -- I think it's the --

16 A. Oh, it's 1365.

17 Q. 1365.

18 A. Yes.

19 Q. Of '93.

20 A. Okay.

21 THE COURT: With respect to what case?

22 MR. DEMARTINI: The sex crimes case.

23 THE COURT: Okay.

24 Q. Does the file indicate when Mr. Murphy  
25 was first arraigned on that case? I'm talking

Vecchione - Cross - Demartini

94

1 about the criminal court arraignment, would  
2 that appear on that folder?

3 A. It doesn't appear --

4 MR. BARKET: Can't we just stipulate  
5 the date? I think it was January 27.

6 MR. DEMARTINI: That he was arraigned  
7 on January 27 --

8 MR. BARKET: 27, I believe.

9 MR. DEMARTINI: -- 1993.

10 MR. BARKET: It's a matter of record.

11 Q. I would show you the following rap  
12 sheet. On the top of the rap sheet, does it  
13 indicate when it's generated?

14 A. It's very hard to read. It looks like  
15 1.

16 MR. BARKET: Judge, I'll stipulate  
17 that the rap sheet was generated at the time  
18 of the arraignment on that charge.

19 Q. And is that --

20 MR. BARKET: Whenever it was.

21 Q. Does the rap sheet that would be  
22 associated with that case contain or indicate  
23 that there are two open cases at that point in  
24 time for Mr. Murphy; namely, that rape case  
25 and the gun case?

Vecchione - Cross - Demartini

95

1 A. Yes.

2 Q. Now you mentioned in, I believe, in  
3 answering one of Mr. Barket's questions  
4 concerning the letter that an Assistant  
5 District Attorney Ralph Pasarero wrote. He  
6 was in Nassau County and he wrote a letter to  
7 Mr. Hollman and eventually you got that  
8 letter.

9 How did you go about answering his  
10 letter? What did you look at before you  
11 answered his letter?

12 A. The Cabeza file.

13 Q. When you say the Cabeza file, is that  
14 the trial folder or boxes that contain the  
15 trial folders for People v. Cabeza and  
16 Marshall case?

17 A. Yes.

18 Q. Did you pull the files for Marshall's  
19 other two cases?

20 A. No, I believe that they were already  
21 acquittals in those cases and those files were  
22 sealed.

23 Q. Did you pull Ciscro Murphy's files?

24 A. No.

25 Q. Now, when the plea agreement was

Vecchione - Cross - Demartini

96

1 entered into with Mr. Murphy, do you remember  
2 when that plea agreement actually was signed?

3 A. If you showed me, I would be able to  
4 hopefully refresh my memory.

5 MR. BARKET: We'll stipulate it was  
6 signed by Mr. Murphy on August 13.

7 MR. DEMARTINI: I think you have it --  
8 you put it into evidence.

9 MR. BARKET: It already is in.

10 MR. DEMARTINI: Yes.

11 MR. BARKET: It's in.

12 MS. DONHAUSER: Yes.

13 MR. BARKET: It's dated July 7. It  
14 was signed off --

15 MR. DEMARTINI: And I showed it --

16 MS. DONHAUSER: We have copies? We  
17 would like to show him copies?

18 MR. BARKET: No, I have it. It was  
19 dated January --

20 THE COURT: No, he's just asking you  
21 for the --

22 MR. DEMARTINI: Can I see that --

23 MR. BARKET: Oh, I am sorry.

24 MR. DEMARTINI: -- have that piece of  
25 evidence to show the witness?

Vecchione - Cross - Demartini

97

1 MR. BARKET: Sure, one second.

2 MR. DEMARTINI: And I have another --

3 MR. BARKET: Yes, show him the other  
4 copy. I mean, there's no dispute about what  
5 it says.

6 MS. DONHAUSER: Paul?

7 MR. DEMARTINI: Yes.

8 MS. DONHAUSER: Here's an extra copy  
9 for you.

10 BY MR. DEMARTINI:

11 Q. Yes.

12 A. Are you asking what date it was  
13 signed?

14 Q. Yes, by Mr. Murphy and his attorney.

15 A. August 13, 1993.

16 Q. And was that also the date that  
17 Mr. Murphy took his plea of two to life?

18 MR. BARKET: We have the minutes that  
19 are in evidence, Judge, yes.

20 THE COURT: All right. He's  
21 stipulating that it was.

22 MR. BARKET: I stipulated to it.

23 THE COURT: Let's go.

24 MR. BARKET: This is ridiculous. The  
25 minutes are going to be part of the record.

Vecchione - Cross - Demartini

98

1           Q.    Would you have sent the -- well,  
2   looking at the folder for the gun case, does  
3   it indicate that the agreement was signed in  
4   court on that day?

5           A.    Yes.

6           Q.    Would you have sent over copies to the  
7   orange zone? Well, first let me ask you, were  
8   the assistant who stood up on August 13, 1993  
9   when Mr. Murphy pled guilty in Judge  
10   Goldberg's part 31?

11          A.    No.

12          Q.    Would it have been an assistant from  
13   the orange zone?

14          A.    That's what it looks like. I can't  
15   read the handwriting but it was not me.

16          Q.    Now I believe Mr. Barket showed you a  
17   note from the orange zone two days prior to  
18   the -- strike that.

19           So you didn't take the plea.

20          A.    No.

21          Q.    Is that correct?

22          A.    I did not.

23          Q.    Would you have sent over the  
24   cooperation agreements, which were ultimately  
25   signed in court?

Vecchione - Cross - Demartini

99

1 A. Yes.

2 Q. Did you expect those cooperation  
3 agreements, copies to then be placed in both  
4 the Court file and our Ciscro Murphy file?

5 A. Yes.

6 Q. Did you instruct anyone in the orange  
7 zone when they took that plea to ask that the  
8 file be sealed, so that no one could see the  
9 cooperation agreement?

10 A. No.

11 Q. Do you know, in fact, if the file was  
12 or wasn't sealed?

13 A. I don't -- I would have no reason to  
14 have it sealed. There was no -- it was not  
15 sealed, as far as I know.

16 Q. Now I believe you testified on direct  
17 examination to one of Mr. Barket's questions  
18 that when you interviewed Mr. Murphy that  
19 first time he came in, other than this contact  
20 information that appears on one of the  
21 documents placed into evidence, you didn't  
22 take any notes.

23 A. That's correct.

24 Q. Is there any reason -- is there a  
25 reason why you didn't take notes?

Vecchione - Cross - Demartini

100

1 A. I don't ever take notes.

2 Q. Why?

3 A. Because I don't want the --

4 THE COURT: It creates impeachment  
5 material.

6 THE WITNESS: Yes.

7 Q. Okay.

8 A. Right.

9 Q. That's clear, now let's get that on  
10 the record.

11 THE COURT: I know. We all know.

12 Many, many prosecutors do but it's not unheard  
13 of.

14 Q. When he was telling you his story and  
15 what he testified to on rebuttal --

16 A. Yes.

17 Q. -- at the trial, was it a long,  
18 complicated story?

19 A. No, it wasn't at all.

20 Q. It had basically boiled down to a  
21 concocted alibi and he was angry at the  
22 defendant for trying to have him associated  
23 with a gun that Mr. Marshall owned.

24 A. In essence, yes, that's what it boiled  
25 down to.

Vecchione - Cross - Demartini

101

1 Q. I believe the following -- I'll show  
2 him the original -- you have a copy of the  
3 letter that was sent --

4 MR. BARKET: I think I put it in  
5 evidence.

6 MR. DEMARTINI: Yes, you put it into  
7 evidence. I don't remember what number it is,  
8 so I'll show the original.

9 Q. After you got through trying the  
10 Cabeza-Marshall case --

11 A. Yes.

12 Q. -- did you receive some correspondence  
13 from Mr. Murphy and in particular, that letter  
14 that you're looking through now?

15 A. It's -- yes, I recall I did; yes.

16 Q. And it's dated when?

17 A. August 15, 1994.

18 Q. And if you could look at, I believe  
19 it's page 3, does he make -- he, being  
20 Mr. Murphy, any reference to his testimony in  
21 the Marshall-Cabeza case?

22 A. Yes.

23 Q. In his reference in that letter, is  
24 there any reference that he was made a promise  
25 at that time?

Vecchione - Cross - Demartini

102

1 A. No.

2 Q. What does he say?

3 A. He says -- how much of the paragraph  
4 do you want me to read?5 Q. Just the paragraph that contains a  
6 reference to the Cabeza case.7 A. It says, "Mr. Vecchione, you're my  
8 only hope. Things in here has gotten worse  
9 concerning my situation and the prison  
10 officials is trying to cover up everything  
11 becuase they do not want to be a part of the  
12 lawsuit. Remember when I was going to testify  
13 against Born, a/k/a Jeffrey Marshall and  
14 Robert Cabeza, and you stated to me, 'to go in  
15 there and tell the Court what I know.' Do you  
16 remember that? Well, for my reason -- my  
17 reason for mentioning that is because I need  
18 you to believe in me once more, to believe  
19 that I will be able to live a law abiding life  
20 and become a productive person within my new  
21 community and society. In fact, I would be  
22 willing to make myself available to your  
23 office on a permanent basis or whenever needed  
24 in an effort to show my appreciation."

25 Q. And, in fact, is that what you told

Vecchione - Cross - Demartini

103

1 him just prior to his testifying to go in  
2 there and to tell the Court what he had told  
3 you previously?

4 A. Yes, in so many words I did. I -- to  
5 go in there and tell the Court what you know.

6 Q. So, at any time that you spoke to him  
7 up to and including March 17, 1993, did you  
8 ever make any promises to him?

9 A. No.

10 Q. Did he request any promises or  
11 consideration for his testimony?

12 A. In that time frame?

13 Q. In that time frame.

14 A. No.

15 Q. And when you entered into the  
16 cooperation agreement, was that based on  
17 additional information that he was now giving  
18 you concerning Mr. Marshall?

19 A. Yes.

20 Q. And that would be information that  
21 related to the second and third homicide  
22 trials?

23 A. Yes.

24 Q. Just one second.

25 One last thing, the rap sheet that you

Vecchione - Cross - Demartini

104

1 looked at that contained -- that mentions both  
2 open cases for Mr. Murphy --

3 A. Yes.

4 Q. -- the gun case and the rape case, was  
5 that rap sheet in the sex crimes folder that  
6 you pulled or had pulled from the sex crimes  
7 unit?

8 A. It would -- I would assume so, since  
9 it had the rape arrest on here.

10 Q. And did you have that case folder  
11 before you went to trial with Mr. Cabeza and  
12 Mr. Marshall?

13 A. Yes.

14 Q. So, is it your testimony that the rap  
15 sheet that you handed or actually there were  
16 two rap sheets that you handed to Mr. Harrison  
17 at that trial, were rap sheets that contained  
18 both cases?

19 A. Yes.

20 Q. And, in fact, were there questions of  
21 Mr. Murphy that concerned both cases?

22 A. Yes.

23 Q. When you turned over the last two  
24 cases to Mr. Hollman, the second and third  
25 Marshall homicides, do you remember telling

Vecchione - Cross - Demartini

105

1 Mr. Hollman that Mr. Murphy was a cooperating  
2 witness?

3 A. Yes.

4 Q. And do you know if Mr. Hollman pulled  
5 the files of Mr. Murphy?

6 A. I don't know what he did.

7 Q. Did you have any follow up -- after  
8 you gave the cases to him, did you have --  
9 well, did you speak to him initially when you  
10 gave him the cases?

11 A. Yes.

12 Q. Did you have any follow up  
13 conversations from the time that you had that  
14 initial conversation when you transferred the  
15 cases over to him until he tried the cases?

16 A. I'm sure I did. I don't recall any --  
17 I don't recall what the content but I am sure  
18 I did. He must have --

19 Q. Did he come to you asking you about  
20 the cases?

21 A. I'm sure he did.

22 Q. Do you remember if he asked you about  
23 any cooperation agreement with Mr. Murphy?

24 A. Specifically, I don't recall. You  
25 know, I would have told him that there were

Vecchione - Cross - Demartini

106

1 cooperation agreements. He would not have  
2 even known the existence of Mr. Murphy if had  
3 it not been for me because Mr. Murphy doesn't  
4 appear on any of the documents in the file  
5 except for the cooperation agreement. I mean,  
6 he was not -- those cases have already been  
7 indicted. Murphy didn't testify in the grand  
8 jury. He wasn't on any DD-5's. He wasn't on  
9 any documents.

10 So, in order for Mr. Hollman to know  
11 about Mr. Murphy, I would have been the one to  
12 tell him.

13 MR. DEMARTINI: Judge, I have no  
14 further questions.

15 MR. BARKET: I have no --

16 THE COURT: I may have misheard. At  
17 the time -- when did he testify in the grand  
18 jury in the subsequent two cases?

19 THE WITNESS: Who is that, Judge?

20 THE COURT: Ciscro Murphy.

21 THE WITNESS: He did not.

22 THE COURT: He did not testify.

23 THE WITNESS: No, that's my point.

24 THE COURT: Okay.

25 THE WITNESS: He did not.

Vecchione - Redirect - Barket

107

1 MR. BARKET: Could I ask a few more  
2 questions, Judge?

3 THE COURT: Of course.

4 REDIRECT EXAMINATION

5 BY MR. BARKET:

6 Q. Could you take a look at the letter,  
7 which I think has been marked as --

8 A. This letter, the --

9 Q. Yes, the letter that Mr. Murphy sent  
10 to you. I believe it's marked as Petitioner's  
11 3.

12 THE COURT: Before he testified at the  
13 first trial, the one that's at issue here, had  
14 there been any discussion about him testifying  
15 in any other trials?

16 THE WITNESS: No, Judge.

17 MR. BARKET: I'm sorry, Judge, I  
18 didn't hear your question.

19 THE COURT: I asked whether before he  
20 testified against Mr. Marshall at the trial  
21 that at's issue here whether he had agreed to  
22 testify in any of the other cases and the  
23 answer was no.

24 Q. Petitioner's 3, could you read for the  
25 Court the first two sentences, please?

Vecchione - Redirect - Barket

108

1 A. "Dear Mr. Vecchione, I hope my letter  
2 find you doing well. I am writing to you  
3 because I know that you are a fair man and a  
4 man of your word."

5 Q. So, he's obviously, in writing this  
6 letter, referring back to some statement you  
7 had made to him where he says you're a man of  
8 your word; right?

9 A. I can't tell you what was in his mind.

10 Q. Well, what does he ultimately ask you  
11 to do here? Take a look at page 4 and read  
12 the first sentence on page 4.

13 MS. DONHAUSER: I'm sorry, which --  
14 what's the date on that letter?

15 MR. BARKET: It's the letter that --

16 MS. DONHAUSER: The same one?

17 MR. BARKET: Yes.

18 THE WITNESS: August 15. What are you  
19 asking me now, Mr. Barket?

20 BY MR. BARKET:

21 Q. Read the first sentence of page 4.

22 A. "Mr. Vecchione, I need your help. I  
23 need you to contact Mr. James Ricor (phonetic)  
24 in Albany, New York. He is the director of  
25 the temporary release program. His phone

Vecchione - Redirect - Barket

109

1 number is (518 457-2655. "

2 Q. And --

3 A. "I need you to -- "

4 Q. Sorry.

5 A. Do you want me to --

6 Q. Go ahead. Read the next sentence.

7 A. "I need you to explain my situation  
8 and to ask him to let me participate in the  
9 work release program."

10 Q. Thank you.

11 Now you indicated --

12 THE COURT: Well, other than what's in  
13 the agreement, did you make him any other  
14 promises, Murphy?

15 THE WITNESS: No, sir.

16 THE COURT: -- about writing to parole  
17 boards?

18 THE WITNESS: No, sir, whatever is in  
19 the agreement is what I agreed to.

20 THE COURT: And does the agreement  
21 refer to letters to the parole board?

22 MR. BARKET: The cooperation  
23 agreement?

24 THE COURT: Yes.

25 MR. BARKET: No, Judge, I think it's

Vecchione - Redirect - Barket

110

1 limited to the two to life.

2 BY MR. BARKET:

3 Q. With respect to -- do you still have  
4 up there the file that, "Spoke to M.  
5 Vecchione, okay to give better plea offer,  
6 defendant helped Mr. Vecchione in the trial?"

7 Do you have that notation?

8 A. On the flap?

9 Q. Right.

10 A. Yes.

11 Q. On the --

12 A. Spoke to -- yes.

13 Q. Under confidential notes.

14 A. Yes.

15 Q. Is that right?

16 A. Yes.

17 Q. And it says -- does that help you,  
18 "The defendant helped Mr. Vecchione in trial?"  
19 Is that the last two words?

20 A. Your guess is as good as mine. I  
21 guess that's what it means. I don't -- you  
22 know, I don't know.

23 Q. It actually did help you in the trial;  
24 right?

25 A. Well, of course, he testified.

Vecchione - Redirect - Barket

111

1 MR. BARKET: And could I have the  
2 original of this, please?

3 MS. DONHAUSER: Which one?

4 MR. BARKET: Could I have the original  
5 of that?

6 Q. Did you testify before that the deal  
7 that you gave Mr. Murphy had nothing to do  
8 with his testimony for Cabeza, that the deal  
9 was prospective in that it was for him to  
10 testify in the next two trials?

11 A. I had no deal with Mr. Murphy with  
12 regard to the Cabeza case.

13 THE COURT: I think what we --

14 MS. DONHAUSER: I don't think I have  
15 the original of this.

16 THE COURT: I think what you were  
17 talking about is, I mean, is what the  
18 agreement references.

19 MS. DONHAUSER: I can tell you what it  
20 looks like. It's this big. That's in red.  
21 The rest is in (inaudible). I don't have  
22 any --

23 MR. BARKET: I'm sorry, Judge?

24 THE COURT: I think what we're talking  
25 about and there was some confusion.

Vecchione - Redirect - Barket

112

1 Ms. Donhauser started giving me numbers but --  
2 of indictments, but the question was whether  
3 the plea agreement actually referenced the  
4 first case.

5 THE WITNESS: It did not, only to the  
6 extent -- it does, only to the extent that the  
7 number that I put in -- when I say -- it reads  
8 as follows, Judge and it's easier to read it.

9 "Under this agreement, Ciscro Murphy  
10 will continue to make himself available to  
11 representatives of the Kings County DA and to  
12 meet with all -- with and at all times to  
13 truthfully and completely disclose all  
14 information, including context of  
15 conversations that he possesses regarding the  
16 criminal activities and the associations of  
17 the following person; Jeffrey Marshall, also  
18 known as Born or Marsh, who is currently  
19 indicted under Kings County indictments  
20 9490/92 and 12592/92."

21 So, the agreement was to the -- for  
22 him to testify and to continue to give us  
23 information with regard to the pending  
24 indictments and this was signed after the  
25 Cabeza case had been tried -- the first case

Vecchione - Redirect - Barket

113

1 had been tried.

2 MR. BARKET: May I continue, Judge?

3 THE COURT: Yes.

4 BY MR. BARKET:

5 Q. Now the that you --

6 THE COURT: Could I see the letter for  
7 the moment?

8 THE WITNESS: Sure, Judge.

9 Q. The note that we just read here  
10 indicates "4/23 spoke to Mike Vecchione. Okay  
11 to give --"

12 THE COURT: Could you stop for a  
13 minute?

14 MR. BARKET: I'm sorry.

15 (Pause in proceedings)

16 Q. That agreement was written on July 6;  
17 correct?

18 A. Yes.

19 Q. On April -- the notes that we're  
20 reading are April 22, 1993.

21 Is that correct?

22 A. It says April 22, 1993; right.

23 Q. So that -- and he testified on March  
24 17.

25 Is that correct?

Vecchione - Redirect - Barket

114

1 A. Right.

2 Q. So within about six weeks of his  
3 testimony, someone had spoken to you and you  
4 had authorized the better deal for Mr. Murphy  
5 on the rape charge because of his testimony  
6 for you in the Cabeza trial.

7 Is that right?

8 A. No, what we were doing was I had  
9 engaged in discussions with Mr. Fiol by that  
10 point and we were giving him the deal based on  
11 his testimony that was going to come up in the  
12 other two trials.

13 Q. Well, the --

14 A. In fact, he had --

15 Q. -- note here says --

16 THE COURT: Let him finish. He'll  
17 read the note.

18 A. In fact, he had testified for me, yes,  
19 in the other case but that's -- and I'm sure I  
20 informed -- I told Suzanne Melendez that he  
21 did; yes.

22 Q. And it --

23 A. But the cooperation agreement was only  
24 for the cases that were coming up, not the  
25 case that he had already testified in.

Vecchione - Redirect - Barket

115

1 Q. Well, the note here, "Spoke to M.  
2 Vecchione," that would be you; yes?

3 A. Yes.

4 Q. Okay.

5 "Okay to give better plea offer.  
6 Defendant helped Michael Vecchione or M.  
7 Vecchione at trial."

8 That's April 22.

9 A. It says, "Spoke to M. Vecchione. Then  
10 it says okay to give better plea offer.  
11 Defendant helped M. Vecchione" and those words  
12 that I am not sure of but I'm sure it says --  
13 that you're right; yes.

14 Q. Take a look at what I've marked as  
15 Petitioner's 14.

16 (Petitioner's Exhibit 14 marked for  
17 identification).

18 MR. BARKET: And I'm going to ask that  
19 we have an understanding, that's a note that  
20 was also in the rape file.

21 Is that correct?

22 MS. DONHAUSER: I have to check that.

23 Q. Do you see what I've highlighted there  
24 in yellow?

25 A. I see what it says; yes.

Vecchione - Redirect - Barket

116

1 Q. Okay.

2 Could you read that to the Court,  
3 please?

4 A. It says, "Mike Vecchione and Sean  
5 Courtney want to deal this case and the gun  
6 case."

7 Q. And what's the date up in the upper  
8 right hand corner of that?

9 A. April 14.

10 Q. That's --

11 A. Is that the -- is this is what you're  
12 referring to?

13 Q. Yes.

14 A. Okay.

15 Q. Now, you indicated that by looking at  
16 the notes which were marked as number 10 --

17 MR. BARKET: Can I have those back  
18 again?

19 MS. DONHAUSER: This?

20 MR. BARKET: Yes.

21 Q. -- marked as number 10, you can tell  
22 from them that you can tell that both files  
23 were requested by you and that you had both  
24 files on the 17th of March.

25 Is that right?

Vecchione - Redirect - Barket

117

1 A. You've asked two questions. Which one  
2 do you want me to answer?

3 MS. DONHAUSER: Does he have it on the  
4 stand?

5 MR. BARKET: Do you still have the --  
6 number 10 up there, the originals?

7 THE WITNESS: Yes.

8 MR. BARKET: Okay.

9 MS. DONHAUSER: Yes.

10 Q. Could you take a look at that?

11 A. Yeah, you asked me two questions.

12 Q. You were asked whether or not you had  
13 the file and whether or not you could tell you  
14 had the files from those notes.

15 A. It appears --

16 Q. And you said yes. Could you just  
17 point to what you were referring to?

18 A. No, other than this note that says  
19 that the assistant from the orange zone wants  
20 the case folder back --

21 Q. That was --

22 A. -- I would --

23 Q. The case folder for the orange zone  
24 back --

25 A. Can I finish my answer?

Vecchione - Redirect - Barket

118

1 Q. -- would be -- sure.

2 A. I would have had both files. Of  
3 course, I would have. I would not have --

4 Q. Would --

5 A. -- done anything with Mr. Murphy  
6 unless I had looked at both files; yes.

7 Q. You had a note from -- a note  
8 specifically requesting the gun case and a  
9 note requesting the gun case back; correct?

10 A. Yes.

11 Q. That's the note that you just referred  
12 to that we're looking for that case back.

13 A. Yes.

14 Q. That was the case that was on P-31 on  
15 the 17th; right, the gun case?

16 A. Part 31; yes.

17 Q. You also said that you could tell by  
18 looking at those notes that you had both  
19 files.

20 A. I can tell --

21 Q. Is there something in the notes --

22 A. No.

23 Q. -- that indicates that you had the  
24 other file?

25 A. Nothing in the notes specifically,

Vecchione - Redirect - Barket

119

1 other than the fact that I would know that I  
2 had -- I would get the cases.

3 Q. Right.

4 A. I mean, there --

5 Q. Actually, there is a reference to the  
6 other case in the file, isn't there, on that  
7 same pad; isn't there?

8 A. What were you -- what you asked me  
9 about before?

10 Q. There's a reference to the second  
11 case; isn't there?

12 A. Yes, there is.

13 Q. What does that say?

14 A. It says, "Complaining witness Lilly  
15 Young never came forward. Complaining witness  
16 Della not credible. Case was not indicted."

17 Q. So on the 17th of March, when you  
18 claimed you had both files, we know that both  
19 cases were indicted at that time; don't we?

20 A. Number one, you say -- you keep  
21 prefacing by saying I had the two files on the  
22 17th. I don't recall having the files in  
23 court with me on the 17th. I don't know if I  
24 did or not. You never asked me that.

25 Did I -- I have I looked at the files

Vecchione - Redirect - Barket

120

1 -- had I looked at the files prior to the  
2 17th? The answer is yes, I did.

3 Q. Is there any notation in Jeffrey  
4 Marshall's file that you've requested or  
5 obtained the rape case?

6 A. In Jeffrey Marshall's file?

7 Q. Yes.

8 A. I have no idea.

9 Q. Is there any notation in any of those  
10 files that you requested or obtained the rape  
11 file?

12 A. The only reference to it is the note  
13 that's in front of me, which indicates that  
14 two of the complaining witnesses in that case  
15 were -- one didn't come forward and one was  
16 not credible.

17 So, the answer to your question is I  
18 had the rape file and I examined it, at some  
19 point prior to the 17th; yes.

20 Q. Okay.

21 And that also says the case was not  
22 indicted; correct?

23 A. At that point, whenever these were  
24 made -- whenever these notes were made, the  
25 case had not been indicted according to this.

Vecchione - Redirect - Barket

121

1 Q. You --

2 A. I don't know if this is an accurate  
3 note. I mean, I didn't make these notes. So,  
4 I don't know if the case is accurate -- if  
5 that's accurate.

6 Q. How did you find Ciscro Murphy in  
7 jail?

8 A. When?

9 Q. When you wanted him?

10 A. I presume, and I didn't find him, but  
11 I presume my paralegal put his name in to the  
12 computer and found -- and he was in jail.

13 Q. Isn't it correct that after he went  
14 back to jail, Mr. Fiol and you entered into  
15 negotiations for a deal and that you knew he was  
16 in jail because Mr. Fiol told you?

17 A. I don't have any recollection of that  
18 at all.

19 Q. Isn't it correct that as these  
20 negotiations were going on, the reason why you  
21 didn't put Murphy on the witness list is  
22 because you never struck a deal with Fiol.

23 A. There were --

24 Q. Fiol wanted a misdemeanor and you  
25 didn't want to give him a misdemeanor.

Vecchione - Redirect - Barket

122

1 A. Do you want me to answer the question  
2 or you --

3 Q. Yes.

4 A. The answer to the question is there  
5 were no negotiations going on between the time  
6 Mr. Murphy came into my office and the time  
7 that he testified. So your preface -- the  
8 preface to your question was not -- is not  
9 correct.

10 Q. So, your testimony now is that your  
11 memory is Mr. Fiol never asked you for  
12 anything?

13 A. I didn't say that. I said there were  
14 no negotiations going on.

15 Q. Is that how --

16 A. My -- when I --

17 THE COURT: Are we talking about some  
18 definition of negotiation or did you not have  
19 any conversation? What's -- about -- I don't  
20 want to get caught up in a --

21 THE WITNESS: Judge, I --

22 THE COURT: Did you have any  
23 conversations with Mr. Fiol about --

24 THE WITNESS: I don't recall  
25 Mr. Fiol --

Vecchione - Redirect - Barket

123

1 THE COURT: -- this issue.

2 THE WITNESS: I may -- I must have had  
3 a conversation with Mr. Fiol to let him know  
4 that his client had come into my office but I  
5 don't have any recollection of any  
6 negotiations taking place or Mr. Fiol asking  
7 me for anything because I recall it was very  
8 simple.

9 Mr. Murphy did not want anything.  
10 There was no need to enter into any kind of  
11 negotiations. He did not want anything. Now  
12 is that amusing, Mr. Barket?

13 THE COURT: Did he say --

14 THE WITNESS: I don't understand.

15 THE COURT: Did he say that he didn't  
16 want anything or is that just because he  
17 didn't -- you're assuming that because he  
18 didn't ask?

19 THE WITNESS: He absolutely,  
20 positively said he did not want anything  
21 because I asked him.

22 Q. And six weeks later, he's getting  
23 better deals in the rape question and three  
24 months later --

25 A. Six --

Vecchione - Redirect - Barket

124

1 Q. -- he's an agreement drafted.

2 A. -- weeks later -- is that a question  
3 or are --

4 Q. Yes, if he didn't want anything except  
5 right after he testified he got something.

6 THE COURT: Don't argue -- I told you  
7 yesterday, there's no need for argumentative  
8 questions. There is no jury --

9 MR. BARKET: I'm sorry, Judge.

10 THE COURT: -- present here.

11 MR. BARKET: Now --

12 THE COURT: You don't have to ask  
13 leading questions.

14 MR. BARKET: I'll withdraw the  
15 question.

16 Q. Now your testimony concerning the  
17 letter you sent to Mr. Pasarero where you  
18 represented to him that there were no  
19 agreements with Cisco Murphy, what you're  
20 telling the Court now is what you meant to say  
21 with that I didn't enter into an agreement  
22 with Mr. Cabeza -- on the Cabeza trial with  
23 Mr. Murphy, not that there were no agreements  
24 in existence; right?

25 A. There clearly were agreements in

Vecchione - Redirect - Barket

125

1 existence.

2 Q. Now there were agreements in existence  
3 for three trials of Jeffrey Marshall --

4 THE COURT: Can I ask this -- could  
5 you stop for a minute? I listened to Murphy  
6 here, who was here yesterday and he struck me  
7 as a pretty shrewd piece of work.

8 THE WITNESS: I had a very limited --

9 THE COURT: I mean, he struck me as  
10 basically, you know, no fool.

11 THE WITNESS: I would say that's  
12 correct, Judge.

13 THE COURT: And it -- I'm not making  
14 any judgments now about the ultimate outcome  
15 but it strikes me that the notion that he  
16 wouldn't ask for anything, that he would  
17 affirmatively say that he didn't want anything  
18 strikes me as being almost totally  
19 inconsistent with his personality.

20 THE WITNESS: Judge, he asked for  
21 nothing.

22 THE COURT: No, I know but --

23 THE WITNESS: I asked him -- no, let  
24 me just finish.

25 THE COURT: But the question I asked

Vecchione - Redirect - Barket

126

1 you was --

2 THE WITNESS: Okay.

3 THE COURT: -- did he say I don't want  
4 anything or did he just simply ask for nothing  
5 and you, as I -- if I heard your answer  
6 correctly, you specifically said that he said  
7 that he didn't want anything and it's sort of  
8 hard for me to believe that someone like  
9 Ciscro Murphy, the person I saw here testify,  
10 would have said I don't want anything.

11 THE WITNESS: Judge, I will answer it  
12 again. I asked him, "What are you looking  
13 for?"

14 He said, "I am looking for nothing. I  
15 am pissed off at Marshall," or Born or  
16 whatever he called him, because of what he had  
17 -- he felt that Marshall had done to him.

18 The reason, Judge, I am so clear and I  
19 remember this is how -- it hasn't happened  
20 very often in my career.

21 THE COURT: Well, no, that doesn't  
22 happen often.

23 THE WITNESS: In fact, I don't think  
24 it's happened at all other than this.

25 MR. BARKET: May I continue, Judge?

Vecchione - Redirect - Barket

127

1 BY MR. BARKET:

2 Q. Now, Mr. Murphy after the deal was  
3 signed, testified in two trials for your  
4 office.

5 Is that correct, the two murder cases?

6 A. I know that based upon --

7 Q. Mr. Hollman --

8 A. -- information -- yes, I wasn't  
9 present at the trials; yes.

10 Q. And you also got a letter from  
11 Mr. Pasarero, who was going to use Mr. Murphy  
12 in a third trial in Nassau County.

13 Is that correct?

14 A. I don't know that he was going to use  
15 him. I don't have any information about that.

16 Q. Didn't he write to you asking for the  
17 agreements? When I say you, it's Mr. Hollman,  
18 asking for the agreements?

19 A. Yes.

20 Q. Including Mr. Murphy's agreement?

21 A. That has nothing to do with him -- his  
22 desire or his plan to use him.

23 Q. And so during those three trials,  
24 subsequent to signing of the agreement, was  
25 that agreement disclosed by you or your office

Vecchione - Redirect - Barket

128

1 to anyone?

2 A. What three trials?

3 Q. The two involving your office, the  
4 murder case that Mr. Hollman tried and the  
5 third with Mr. Pasarero?

6 A. The only one I could speak to is the  
7 one that took place before the one that I  
8 tried. I had no agreement and, therefore, of  
9 course, nothing was turned over because there  
10 was no agreement.

11 What happened in the latter two trials  
12 and the trial in Nassau County, I have no  
13 information.

14 Q. And the only public notation -- excuse  
15 me, withdrawn.

16 The only written statement you make  
17 about the agreement is a letter to  
18 Mr. Pasarero saying it doesn't exist.

19 Is that right?

20 A. I don't know what you're asking me.  
21 There was no agreement to give to him.  
22 Nothing existed with regard to the Cabeza  
23 case.

24 Q. When Mr. Pasarero asked you for any  
25 agreements your office has with Ciscro

Vecchione - Redirect - Barket

129

1 Murphy --

2 MS. DONHAUSER: Judge, we've gone over  
3 this --

4 A. Mr. Barket, I answered that question  
5 already.

6 MS. DONHAUSER: -- I don't know how  
7 many times.

8 THE COURT: We're going over -- this  
9 has been asked and answered.

10 Q. When Mr. Murphy testified in the trial  
11 before Judge Aiello, the Cabeza trial --

12 A. Yes.

13 Q. -- you indicated that he said that he  
14 -- the second crime was assaulting some girl.

15 Is that correct?

16 A. If you show me the minutes, I can give  
17 you the exact quote. I don't recall but I  
18 believe that that's the way he always  
19 characterized it.

20 Q. Did you stand up --

21 A. As a sexual assault or an assault on a  
22 woman.

23 Q. Did you stand up and correct him and  
24 say to the judge either on or off the record,  
25 Judge, that's not an assault, that's a rape?

Vecchione - Redirect - Barket

130

1 A. He was being cross-examined by  
2 Mr. Harrison and Mr. Harrison had the rap  
3 sheet in front of him. I was going to  
4 interrupt his cross-examination and have --  
5 and correct the witness? I believe that  
6 Mr. Harrison had the right to cross-examine  
7 him.

8 And if he characterized it as an  
9 assault, as opposed to a rape, that's a very  
10 good piece of cross-examination material.  
11 So --

12 Q. What do you mean that's a very good  
13 piece of cross-examination material?

14 A. Well, if he's characterizing it one  
15 way and the rap sheet says something else, it  
16 would be up to Harrison then to, I would  
17 assume, cross-examine him with it.

18 Q. When you say --

19 A. That would be --

20 Q. -- a very good piece, that would be  
21 something as a defense attorney that would be  
22 -- make a lot of hay with, wouldn't you, to be  
23 able to say, it's not assault, it's a rape.  
24 And you would go into that.

25 A. Yes.

Vecchione - Redirect - Barket

131

1 Q. Because the person just lied to the  
2 Court.

3 A. Because the person mischaracterized or  
4 characterized it in his own way; yes.

5 Q. But there was some testimony you gave  
6 on cross, I guess, or the examination by the  
7 attorneys in your office, there was a  
8 conference at the bench or was that between  
9 you and Mr. Harrison and the Court prior to  
10 Murphy's testimony?

11 A. Yes.

12 Q. Was that on the record or off the  
13 record?

14 A. Off the record.

15 THE COURT: And what was -- tell me  
16 what was the substance of the conversation off  
17 the record?

18 THE WITNESS: We went to the bench and  
19 I told the judge that I was going to use --  
20 that I had made up my mind that I was going to  
21 use him or that he was right outside but that  
22 his lawyer wasn't there.

23 And as I said to you, Judge, it was  
24 very late in the day. It may have even been  
25 close to 4:30 and Judge Aiello wanted to

Vecchione - Redirect - Barket

132

1 conclude the case because he knew that except  
2 for, I believe, a sur rebuttal witness that  
3 Harrison may was -- may have wanted to call,  
4 that was going to be the end of the trial and  
5 he was anxious to get it over with.

6 And he said in so many words, don't  
7 worry about that. I'll protect him. You're  
8 not going -- I'm not going to allow either of  
9 you to go into his underlying -- the  
10 underlying facts of his cases.

11 Q. Did Mr. Harrison complain that he  
12 wasn't given notice of the alibi rebuttal  
13 witness during that conference?

14 A. Not to my knowledge.

15 THE COURT: Is there a rule that  
16 requires such notice?

17 MR. BARKET: Yes, Judge.

18 THE WITNESS: Yes, but I had case law,  
19 Judge, that I believe would have taken care of  
20 it in the event that that was raised.

21 BY MR. BARKET:

22 Q. Now when did you first tell  
23 Mr. Harrison that Murphy was going to be  
24 called, was it that day?

25 A. That -- to use the name Murphy or that

Vecchione - Redirect - Barket

133

1 I was going to --

2 Q. Yes, no to use the name Murphy. You  
3 told him that Ciscro Murphy would, you know --

4 A. When I called him and I said the  
5 people call Ciscro Murphy.

6 Q. So, Mr. Harrison -- the information he  
7 has on Mr. Murphy came exclusively from you.

8 Is that right?

9 A. No.

10 Q. Well --

11 A. No, Mr. Harrison -- he worked for  
12 Mr. Harrison. He worked for Mr. Harrison. He  
13 worked for Mr. Marshall at Mr. Harrison's  
14 office. So, Mr. Harrison knew a great deal  
15 about Mr. Murphy.

16 Q. My question --

17 A. He knew an awful lot about Mr. Murphy.

18 Q. Did the judge give Mr. Harrison time  
19 to go pull Mr. Murphy's criminal files prior  
20 to his testimony?

21 A. I don't recall that. I don't think  
22 Mr. Harrison asked for that.

23 MR. BARKET: That's all I have, Judge.  
24 Thank you.

25 RECROSS-EXAMINATION

Vecchione - Recross - Demartini

134

1 BY MR. DEMARTINI:

2 Q. The document that counsel is showing  
3 you, the one with the notes, if you could look  
4 at the note that's stapled on the back.

5 Does that have to do with the sex  
6 crimes case?

7 A. Excuse me, yes.

8 Q. And does it, in fact, tell you an  
9 indictment number for the sex crimes case?

10 A. Yes.

11 Q. So, looking at that note, would that  
12 refresh your recollection as to whether or not  
13 at some point prior to March 17 when you tried  
14 the case and put --

15 MR. BARKET: I'm sorry, can you -- I  
16 just want to be able to see what note he's  
17 referring to?

18 MS. DONHAUSER: It's the --

19 MR. BARKET: He's looking at --

20 MS. DONHAUSER: It's this. This is  
21 the statement piece on the flip side of what  
22 you were showing him. You were showing this.

23 MR. BARKET: Okay.

24 MS. DONHAUSER: He's showing the  
25 opposite side --

Vecchione - Recross - Demartini

135

1 MR. BARKET: Okay.

2 MS. DONHAUSER: -- which was this and  
3 there's a statement.

4 Q. Does that note on the back of the  
5 yellow pad or the sheet coming from the yellow  
6 pad refresh your recollection as to whether or  
7 not you would have had the sex crimes case  
8 pulled at some time prior to the March 17 date  
9 upon which Murphy testified in the Cabeza  
10 trial?

11 A. I didn't need my recollection  
12 refreshed but yes, I did pull it before and I  
13 did know that there was a rape charge; yes.

14 Q. And, in fact, that refers to the rape  
15 charge.

16 A. Yes, it does.

17 Q. And --

18 A. In fact, these are my -- this part is  
19 my handwriting where I have ROR, which means  
20 released on his own recognizance because  
21 that's what had happened as a result of the  
22 people not being ready on the rape case.

23 Q. That was before the indictment?

24 A. That was before the indictment.

25 Q. After he was arraigned on the

Vecchione - Recross - Demartini

136

1 complaint.

2 A. That's correct.

3 Q. And then that also indicates that  
4 subsequently there was an indictment?

5 A. Yes, the indictment number is on here.

6 Q. And I would just show you page 11 and  
7 I believe all of this is -- will be in the  
8 record, 1179 of Murphy's testimony in the  
9 Cabeza trial.

10 A. Okay.

11 Q. Does that page indicate what Murphy's  
12 response was as to his second pending case?  
13 Did he merely say it was an assault or did he  
14 say it was more than that?

15 A. He says -- the question is:

16 "Question: You have two charges.

17 "Answer: Yes."

18 I'm sorry, the question is:

19 "Question: And you have two charges;  
20 yes?

21 "Answer: Possession of a weapon in  
22 the second -- in the first, I mean."

23 Then the Court interrupts and the  
24 Court says:

25 "The Court: You said there were two

Vecchione - Redirect - Barket

137

1 cases pending; two separate cases?

2 "Answer: Yes.

3 "The Court: One is for a weapon and  
4 what's the other one?

5 "Answer: Supposed to be assaulting  
6 this girl.

7 "The Court: One for assault, one for  
8 a weapon? Go ahead."

9 Q.. But Mr. Murphy's response was it's  
10 supposed to be assaulting this girl?

11 A. Correct.

12 Q. When he spoke to you about his open  
13 case, the rape case, how did he characterize  
14 it?

15 A. Similar.

16 Q. As assaulting a girl?

17 A. Yes.

18 MR. DEMARTINI: I have no further  
19 questions, your Honor.

20 REDIRECT EXAMINATION

21 BY MR. BARKER:

22 Q. Did he talk to you about his pending  
23 cases without Mr. Fiol being present?

24 A. No.

25 MR. BARKET: Nothing further.

Vecchione - Redirect - Barket

138

1 RECROSS EXAMINATION

2 BY MR. DEMARTINI:

3 Q. When you say no, do you mean the  
4 underlying facts? He told you what he was  
5 charged with.

6 A. Oh, he told me what he was charged  
7 with but that's not what I took that from -- I  
8 took from the question was the underlying  
9 facts. I did not go into those with him.

10 Q. Okay.

11 REDIRECT EXAMINATION

12 BY MR. BARKET:

13 Q. So, he never told you then -- excuse  
14 me, Judge -- he never told you then about the  
15 gun, how he got beat up, how the gun wasn't  
16 really his, how Jeffrey Marshall planted the  
17 gun on him?

18 A. He was --

19 Q. He didn't go into that --

20 A. That --

21 Q. He didn't give you the defense for the  
22 gun charge?

23 A. No, I don't really remember that. I  
24 just -- I really don't remember. I know I  
25 didn't go into the facts with him.

Vecchione - Redirect - Barket

139

1 MR. BARKET: Thank you. Nothing else,  
2 Judge.

3 THE COURT: Wait, I don't understand  
4 that because he's giving you an explanation  
5 for why he's coming into talk and for why he  
6 wants to cooperate against Murphy.

7 THE WITNESS: Correct, Judge.

8 THE COURT: So that explanation --

9 THE WITNESS: No, but I --

10 THE COURT: -- would have had to have  
11 included some discussion that --

12 THE WITNESS: He said that Jeffrey  
13 Marshall tried to plant some -- plant a gun on  
14 him, yes, but I never made the connection  
15 between -- with any definitiveness at that  
16 point, between the connection with -- between  
17 the gun that he says he had on him and the gun  
18 that he says Marshall wanted to try to plant  
19 on him.

20 THE COURT: Okay.

21 THE WITNESS: That's what I meant.

22 THE COURT: Any other questions?

23 MR. BARKET: No, your Honor.

24 THE COURT: Thank you.

25 THE WITNESS: Thank you.

Vecchione - Redirect - Barket

140

1 MR. BARKET: Could I just see --

2 THE COURT: Do you want him to leave?

3 He's leaving. Do you want him for a minute?

4 MR. BARKET: Just one second. There's  
5 one thing I wanted to check.

6 Yes, there a couple of more questions.  
7 I'm sorry.

8 THE COURT: Could you come back for a  
9 minute?

10 MR. BARKET: I just remembered  
11 something.

12 BY MR. BARKET:

13 Q. Now your testimony is that and I'm  
14 referring now to Petitioner's 3, that what you  
15 told Mr. Murphy before he testified in the  
16 Cabeza trial were words to the effect of to go  
17 in there and tell the Court what you know.

18 Is that right?

19 A. Yes.

20 Q. Now, Judge, I -- and then after that  
21 happened, your bureau, you and Mr. Courtney,  
22 there's a notation in the rape case that you  
23 wanted to deal the rape case and the gun case.

24 Is that right?

25 MS. DONHAUSER: What are you --

Vecchione - Redirect - Barket

141

1 MR. BARKET: Yes.

2 MS. DONHAUSER: What information are  
3 you --

4 MR. BARKET: That's number 14, I  
5 believe.

6 MS. DONHAUSER: Yes, can you tell us  
7 what the page they are?

8 MR. BARKET: It's the -- can I  
9 approach, Judge.

10 MS. DONHAUSER: Oh, the note; yes.

11 MR. BARKET: Do you know what I am  
12 referring to?

13 MS. DONHAUSER: It's the separate  
14 note?

15 MR. BARKET: April 14 date.

16 MS. DONHAUSER: Yes.

17 Q. Do you remember seeing that?

18 A. I don't know whose note that is. Yes,  
19 I remember you showing it to me.

20 Q. And ultimately what you did is you did  
21 consolidate those two cases and you disposed  
22 of it.

23 Is that right?

24 A. That's what happened; yes.

25 Q. So, if Mr. Murphy had said to me at

Vecchione - Redirect - Barket

142

1 the Franklin Correctional Facility, I mean,  
2 he, referring to you, didn't say that in  
3 direct words but he said testify, give us all  
4 the information you've got, he said he'll talk  
5 to the other people to consolidate it before  
6 the Cabeza trial, would that statement be  
7 accurate?

8 A. No.

9 MR. BARKET: Nothing further, Judge.

10 THE COURT: All right?

11 MR. DEMARTINI: Nothing.

12 MS. DONHAUSER: Nothing further.

13 THE COURT: Do you want to come up?

14 Can I ask you, I just want to  
15 understand your theory, what is the theory  
16 behind the argument that he failed to disclose  
17 -- let's assume he failed to disclose this  
18 agreement to Dan Hollman --

19 MR. BARKET: It would be --

20 THE COURT: -- and he failed to  
21 disclose it to the Nassau County District  
22 Attorney, and he did that because?

23 MR. BARKET: He did that, Judge,  
24 because he didn't disclose it in the Cabeza  
25 trial and he had a secret agreement with

Proceedings

143

1 Murphy. Either Murphy didn't want to be known  
2 as a rat while he was in jail, which seems  
3 obvious from his testimony or he, for reasons  
4 that I think are obvious now, that he didn't  
5 want the agreement to be known because  
6 Murphy's testimony would be devastated with  
7 the agreement.

8 I mean, Murphy is a jailhouse  
9 informant, nothing more. He says Marshall  
10 told me this. That's what makes him useful.  
11 If he gets a huge benefit, which he did, for  
12 that testimony and people know that his  
13 motivation for testifying is not because  
14 Marshall --

15 THE COURT: I understand that.

16 MR. BARKET: -- beat him up and did  
17 all that stuff --

18 THE COURT: I understand.

19 MR. BARKET: -- it devastates his  
20 testimony.

21 THE COURT: I understand the impact  
22 that it has on his testimony if there's an  
23 agreement. That's not my question.

24 My question is what is the -- he  
25 didn't -- let's assume that Dan Hollman's

Proceedings

144

1       testimony is more accurate. He didn't  
2       disclose to Dan Hollman the existence of the  
3       plea agreement, as Hollman was beginning to  
4       try the case and he didn't disclose it to the  
5       Nassau County District Attorney, even though  
6       arguably, the letter clearly requested it --  
7       not arguably, it clearly requested it, why  
8       would he not disclose it in -- for reasons  
9       that are relevant to this trial -- to this  
10      hearing right now?

11            MR. BARKET: In other words, why is it  
12      relevant here?

13            THE COURT: Right.

14            MR. BARKET: There's the --

15            THE COURT: In other words, I  
16      understand that if it was disclosed in either  
17      of the proceedings, it would have effected the  
18      credibility of Ciscro Murphy --

19            MR. BARKET: I understand the  
20      question, Judge.

21            THE COURT: -- on all three trials,  
22      so --

23            MR. BARKET: The short answer is and  
24      the best analogy I can give you, it's a 404(b)  
25      argument, that this is the agreement that

Proceedings

145

1 we're dealing with here and for reasons that  
2 we -- that seem obvious, that this man,  
3 Vecchione, deliberately concealed this  
4 agreement apparently from people in his own  
5 office, affirmatively lied about it to a  
6 district attorney in Nassau County when he was  
7 asked that.

8 THE COURT: Well, what -- I am asking  
9 you what motive is as it effects this  
10 particular case?

11 MR. BARKET: Because it then past --  
12 it goes to his intent, absence of mistake, and  
13 obviously his credibility. When he's telling  
14 the Court there wasn't an agreement before the  
15 Cabeza trial, we -- and if there was, I would  
16 have disclosed it, which is essentially the  
17 purpose of putting in all the other  
18 agreements, we know that's not true as it  
19 relates to Murphy because we know that with  
20 Murphy's cooperation agreement, for whatever  
21 reason, he consciously decided not to disclose  
22 it repeatedly.

23 So that the fact that he didn't  
24 disclose it in the subsequent, I would say,  
25 three trials, two in Brooklyn and one in

Proceedings

146

1       Nassau, tells you that he would not have  
2       disclosed it on the 17th.

3               It was his mode of operation, if you  
4       will, as it relates to Murphy and Marshall.  
5       And the reason for his doing that is, I see, I  
6       would believe, is that he knows that it would  
7       destroy and not only his -- look, ordinarily  
8       you have a cooperating witness who says I'm  
9       getting a deal and this is what happened. And  
10      it's kind of, you know -- in this instance,  
11      Murphy's entire testimony, what makes it  
12      credible, if it's credible at all, is his  
13      motivation for coming in.

14               He essentially says, you know, this is  
15      me and Marshall and this is what happened.  
16      Once we find out that he's got a huge benefit  
17      for that, saved himself a decade in jail, his  
18      -- the core of his testimony is destroyed.  
19      You can't reveal it.

20               And I believe what happened, Judge, is  
21      it --

22               THE COURT: So, is it that he was  
23      afraid that if he disclosed the agreement  
24      which on its face, the written agreement  
25      operated prospectively, it would raise

Proceedings

147

1       questions about what actually happened at the  
2       first trial.

3                   Is that it?

4                   MR. BARKET: I think that was part of  
5       it, Judge, but I also think his motivation was  
6       to not to have that disclosed because it would  
7       ruin Murphy's credibility in the prospective  
8       trials. That if the agreement was disclosed  
9       -- in other words, he has a decision to make  
10      for himself every time he has an agreement.

11      Do I disclose it or don't I disclose it?

12                  And this man, for whatever reason,  
13       consciously decided not to disclose it,  
14       repeatedly. And we have --

15                  THE COURT: No, but you keep going  
16       over it. I'm asking about --

17                  MR. DEMARTINI: Your Honor, there's a  
18       flaw in that argument.

19                  THE COURT: I'm asking about it --

20                  MR. BARKET: So --

21                  THE COURT: I think you've answered  
22       it. I was just -- I'm asking about it's  
23       relevance. I understand your argument, its  
24       propensity. If he didn't disclose it --

25                  MR. BARKET: Well, essentially --

Proceedings

148

1                   THE COURT: -- you know, in the  
2                   subsequent three times --

3                   MR. BARKET: And it shows a  
4                   willingness for him to do exactly that which  
5                   we've accused him of doing, which is  
6                   concealing the agreement and keep in mind that  
7                   what he did behind Mr. Fiol's back was  
8                   reprehensible for other reasons.

9                   THE COURT: Well, we don't have to get  
10                  into that --

11                  MR. BARKET: No.

12                  THE COURT: -- because I don't --

13                  MR. BARKET: But it goes --

14                  THE COURT: -- grant habeas corpus  
15                  relief on that ground.

16                  MR. BARKET: -- to his motivation. He  
17                  needs Murphy. It's obvious from the orders to  
18                  produce that he wanted Murphy, that he knew he  
19                  was going to call Murphy as a witness, that he  
20                  needed Murphy to put this testimony in against  
21                  Jeffrey Marshall.

22                  And he has a problem because Fiol  
23                  won't let him. Fiol is saying I want a better  
24                  deal for my client.

25                  THE COURT: Well, I don't know about

Proceedings

149

1 Fiol.

2 MR. DEMARTINI: We haven't heard --

3 MS. DONHAUSER: We haven't heard from  
4 Fiol.

5 MR. BARKET: Well, but -- your Honor,  
6 that's --

7 THE COURT: It remains to be -- hear  
8 from Fiol.

9 MR. BARKET: That -- and then after  
10 that happens, he makes the deal and it can't  
11 -- I mean, I am sure that factored into his  
12 mind in not disclosing it during -- in the  
13 future trials.

14 MR. DEMARTINI: Your Honor, the flaw  
15 in that argument is if he really doesn't want  
16 the deal disclosed, so that he's not going to  
17 tell Hollman, then Mr. Vecchione's going to go  
18 over, take that plea and get the file sealed.  
19 He's not going to leave copies of this thing  
20 in every Ciscro Murphy file and in the Court  
21 file where Mr. Barket found it.

22 MR. BARKET: Actually, it was --

23 MS. DONHAUSER: No.

24 MR. BARKET: -- clearly a mistake. We  
25 all know that normally when these deals are

Proceedings

150

1 done, the files are sealed, the cooperation  
2 agreements are not --

3 MR. DEMARTINI: But it wasn't.

4 MR. BARKET: Yes, because he wasn't  
5 there. He wasn't there.

6 MR. DEMARTINI: But if he is so eager  
7 to have this kept secret, then he's going to  
8 be there.

9 MR. BARKET: Well, he probably told  
10 somebody to do it. He assumed it wouldn't be  
11 put in there.

12 MS. DONHAUSER: That's a --

13 MR. BARKET: It was a mistake.

14 MR. DEMARTINI: Yes, that --

15 MS. DONHAUSER: No, that's a -- it was  
16 just some --

17 MR. BARKET: It was sheer luck --

18 MS. DONHAUSER: Absolutely not.

19 MR. BARKET: -- that I found that;  
20 sheer luck that I found that.

21 MS. DONHAUSER: Sheer luck. I would  
22 think as a good attorney you would go look and  
23 you did.

24 MR. DEMARTINI: And I think the sad  
25 thing here is that Mr. Hollman was not a good

Proceedings

151

1 attorney when he was trying the Marshall  
2 cases. I mean, every time I try a case and I  
3 believe every time Mr. Barket tried a case as  
4 a prosecutor and you too, your Honor, you  
5 pulled the files of your witnesses who have  
6 criminal records. Mr. Hollman didn't bother.  
7 The agreement definitely was there.

8 MR. BARKET: The answer is the letter  
9 to Mr. Pasarero where another prosecutor  
10 trying Jeffrey Marshall asks him for the very  
11 thing that is in dispute now and he lies to  
12 him. He says it doesn't exist.

13 MR. DEMARTINI: It's two years later  
14 and he is sloppy, you know?

15 MR. BARKET: How could --

16 MR. DEMARTINI: What am I going to do?

17 MR. BARKET: Two years later and he's  
18 sloppy?

19 And, Judge, the perspective on this is  
20 Marshall was not some miscellaneous person  
21 charged with some small offense. He's an  
22 individual that sat through four -- three  
23 murder trials in Brooklyn and the attempted  
24 murder of a retired police officer and another  
25 money courier in Nassau County in two years.

Proceedings

152

1                   THE COURT: And did he -- was he asked  
2 -- again, refresh my recollection, I know I  
3 read it before but was he asked whether he had  
4 any deals in those subsequent cases?

5                   MR. DEMARTINI: He didn't testify --

6                   MR. BARKET: Murphy --

7                   MR. DEMARTINI: -- in Nassau County.

8                   MR. BARKET: No, he --

9                   THE COURT: No, in the subsequent two  
10 in Brooklyn?

11                  MR. DEMARTINI: And he wasn't asked in  
12 the second homicide --

13                  MS. DONHAUSER: No, the --

14                  MR. DEMARTINI: -- or the second  
15 Hollman trial.

16                  MS. DONHAUSER: In the second Hollman  
17 trial he wasn't asked and in the first Hollman  
18 trial, he was asked. We went through that  
19 testimony yesterday and he replied that he did  
20 not.

21                  And that's, I think -- I believe  
22 that's when your Honor sort of discussed at  
23 length with him his response to that.

24                  Now, I think what's significant here,  
25 too, is obviously, Ciscro Murphy's attorney,

Proceedings

153

1 Juan Fiol -- Mr. Fiol signed the agreement.

2 He could have spoken to people about the  
3 agreement.

4 Ciscro Murphy himself, when Dan  
5 Hollman asked that question, he could have  
6 said something about the agreement. Now, he  
7 didn't. It seems that Mr. Hollman was unaware  
8 of the agreement but, you know, that's  
9 assuming that Mr. Vecchione, after the written  
10 agreement was signed in court when he wasn't  
11 even in court, that somehow something was  
12 conveyed to Ciscro Murphy by either Ciscro  
13 Murphy's attorney or somehow was conveyed to  
14 Ciscro Murphy that he shouldn't tell anybody  
15 about the written agreement. I mean, it's --

16 THE COURT: Well, we have to hear  
17 from Mr. Fiol about what was going on.

18 MR. BARKET: You have opportunity  
19 after opportunity to disclose it. When no  
20 questions are asked, they're silent.

21 MS. DONHAUSER: We're talking about  
22 two agreements.

23 MR. BARKET: When --

24 MS. DONHAUSER: We're talking about  
25 the signed --

Proceedings

154

1 MR. BARKET: No, we're not --

2 MS. DONHAUSER: -- written agreement.

3 MR. BARKET: We're not.

4 MS. DONHAUSER: And your --

5 MR. BARKET: We're not.

6 MS. DONHAUSER: You had never made the  
7 position that the signed written agreement was  
8 a signed written agreement before the Cabeza  
9 trial.

10 MR. BARKET: No.

11 MS. DONHAUSER: Obviously, it was --

12 MR. BARKET: At every point they had  
13 to disclose the Murphy deal. If they were  
14 asked, they lied about it and if they weren't  
15 asked, they remained silent. And it didn't  
16 happen once, it happened repeatedly.

17 And it didn't only happen with respect  
18 to the agreement, Judge. They did this and  
19 you'll see the letters while they're writing  
20 letter after letter to the parole board and to  
21 the temporary release program recommending  
22 that this man be released and Murphy's writing  
23 them back thanking them for all the letters  
24 they're writing for him.

25 MS. DONHAUSER: The person that is

Proceedings

155

1 writing those letters is Dan Hollman --

2 MR. BARKET: And --

3 MS. DONHAUSER: -- and you heard him  
4 on the stand --

5 MR. BARKET: And --

6 MS. DONHAUSER: -- yesterday --

7 MR. BARKET: And --

8 MS. DONHAUSER: -- he claimed that he  
9 didn't say --

10 MR. BARKET: And Vecchione.

11 MS. DONHAUSER: -- that it was  
12 necessary to reply to that.

13 MR. BARKET: And --

14 MR. DEMARTINI: Right, Mr. Vecchione.

15 But the parole letter that Michael Vecchione  
16 wrote on July 6, 1993, was he put that in the  
17 file, in the Marshall file --

18 MS. DONHAUSER: It was in the Marshall  
19 file.

20 MR. DEMARTINI: -- and Hollman turned  
21 it over.

22 MS. DONHAUSER: And Hollman turned it  
23 over to Mr. Harrison --

24 MR. DEMARTINI: And it's a -- you  
25 know, so it's crazy --

Proceedings

156

1 MS. DONHAUSER: -- at the second  
2 trial.

3 MR. DEMARTINI: -- that if you don't  
4 want nay of this going in, he's going to leave  
5 it there.

6 MR. BARKET: He didn't turn it over.

7 MR. DEMARTINI: Yes.

8 MS. DONHAUSER: He --

9 MR. BARKET: Murphy was asked about  
10 it. That's how he got it.

11 MS. DONHAUSER: Absolutely not and we  
12 can put into evidence the fact that it was  
13 turned over.

14 MR. BARKET: Hollman asked Murphy, any  
15 deals or any promises whatsoever and Murphy  
16 lies and says no.

17 MS. DONHAUSER: And then --

18 MR. DEMARTINI: The first question on  
19 cross --

20 MS. DONHAUSER: -- Harrison's question  
21 is --

22 MR. DEMARTINI: -- is what?

23 MR. BARKET: Why don't you guys go  
24 back and reopen Murphy's deal because he  
25 purged himself in that trial.

Proceedings

157

1 MS. DONHAUSER: We can --

2 MR. BARKET: He purged himself in a  
3 murder trial.

4 MS. DONHAUSER: We can recall Dan  
5 Hollman and put into evidence the fact that he  
6 disclosed --

7 MR. DEMARTINI: He turned over the  
8 parole letter --

9 MS. DONHAUSER: -- in fact, we did  
10 that yesterday.

11 MR. DEMARTINI: And that was the first  
12 question on cross.

13 MS. DONHAUSER: And it's part of  
14 Rosario. It's the part of the Rosario -- it's  
15 a signed Rosario, signed received by  
16 Mr. Harrison --

17 MR. BARKET: How did he get the parole  
18 order and not the written agreement?

19 MS. DONHAUSER: -- the fact that there  
20 is a July 6, 1993 --

21 MR. BARKET: How did he get the parole  
22 agreement letter and not the agreement?

23 MR. DEMARTINI: Because the parole --

24 MR. BARKET: They're on the same day.

25 MR. DEMARTINI: The parole letter was

Proceedings

158

1 put --

2 MS. DONHAUSER: The letter was  
3 signed --

4 THE COURT: Let him answer it.

5 MS. DONHAUSER: The letter was signed  
6 July 6, 1993.

7 MR. DEMARTINI: The parole letter --

8 MR. BARKET: So was the agreement.

9 THE COURT: If I can answer. I can  
10 answer.

11 MS. DONHAUSER: It was signed August  
12 1993.

13 THE COURT: Please, I can't -- there's  
14 no point in me listening.

15 MR. DEMARTINI: Just to answer that  
16 one question, the parole letter was put in the  
17 Cabeza file. All of the agreements went over  
18 to court because they had to be signed by  
19 Mr. Murphy and his attorney.

20 MS. DONHAUSER: And they were executed  
21 on August --

22 MR. DEMARTINI: And they then were put  
23 into Murphy's file.

24 MS. DONHAUSER: -- 13, 1993.

25 MR. DEMARTINI: Where we found them

Proceedings

159

1 and in the court Murphy file where you found  
2 them.

3 THE COURT: I will see you on October  
4 (sic) 23.

5 MR. BARKET: I'm sorry, Judge?

6 THE COURT: I'll see you on the 23 of  
7 August. I am sorry.

8 MS. DONHAUSER: Excuse me?

9 MR. DEMARTINI: August 23 at 2 p.m.?

10 MS. DONHAUSER: We're --

11 MR. BARKET: For Mr. Fioli?

12 THE COURT: For Mr. Fioli.

13 MS. DONHAUSER: We're not available on  
14 that date, your Honor. I am sorry. Both of  
15 us -- both Mr. Demartini and myself have  
16 longstanding plans for vacation. I have over  
17 eleven weeks of vacation due.

18 MR. BARKET: When are you coming back?

19 MS. DONHAUSER: After Labor Day.

20 MR. DEMARTINI: Now do you want us  
21 here on that return date in early August when  
22 Legal Aid is supposed to present their  
23 position with respect to --

24 THE COURT: I don't -- I gave them  
25 until them --

Proceedings

160

1 MR. DEMARTINI: All right.

2 THE COURT: -- to tell me what their  
3 position is going to be.

4 MR. DEMARTINI: Okay.

5 THE COURT: I don't expect them to be  
6 here.

7 MR. DEMARTINI: Okay. So, they'll  
8 just be communicating with you.

9 THE COURT: I would assume they'll be  
10 communicating with --

11 THE CLERK: We can continue on  
12 September 5. Thursday, September 5.

13 MR. BARKET: That's a Thursday.  
14 That's fine.

15 MS. DONHAUSER: Thursday, September 5,  
16 that's fine. 11 o'clock or 1 p.m.?

17 MR. BARKET: 11 o'clock and we'll make  
18 arrangements for Mr. Marshall to come back  
19 down? He won't be held here all this time.

20 THE COURT: No, he's not going to be  
21 held here.

22 MR. DEMARTINI: No, we'll put another  
23 note for that.

24 THE COURT: Unless you want to for one  
25 witness, waive his appearance, otherwise we'll

Proceedings

161

1 bring him down.

2 MR. BARKET: I --

3 MS. DONHAUSER: And it's possible  
4 that, your Honor, that we will have witnesses  
5 at that time.

6 THE COURT: Okay.

7 MR. BARKET: So, no, I don't think I  
8 could do that.

9 THE COURT: All right.

10 So, let's not get lost in terms of  
11 doing that; getting him down here.

12 MS. DONHAUSER: I'll do that this  
13 time.

14 THE COURT: Okay.

15 MS. DONHAUSER: I'm sorry for the  
16 confusion.

17 THE COURT: Okay.

18 Where's the writ? I have to write  
19 that the writ is satisfied.

20 MR. BARKET: What was the question?

21 THE COURT: I need the writ. Don't go  
22 yet.

23 (Pause in proceedings)

24 (Discussion held off the record)

25 THE COURT: Wait one second. I've got

Proceedings

162

1 to satisfy -- I'm going to write that the writ  
2 is satisfied.

3 Do you have the writ?

4 MR. DEMARTINI: I don't have the write  
5 with me, Judge.

6 (Pause in proceeding)

7 THE COURT: If you don't have it,  
8 we'll try and find the original.

9 (Matter concluded)

10 -000-

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I N D E X

Michael Vecchione:

Direct Examination by Mr. Barket.....	4
Cross-examination by Mr. Demartini.....	66
Redirect Examination by Mr. Barket.....	107
By Mr. Barket.....	137
By Mr. Barket.....	138
Recross-examination by Mr. Demartini.....	134, 138

E X H I B I T S

Petitioner's Exhibits Marked for Identification:

Petitioner's Exhibit 7.....	12
Petitioner's Exhibit 10.....	25
Petitioner's Exhibit 11.....	29
Petitioner's Exhibit 12.....	60
Petitioner's Exhibit 13.....	65
Petitioner's Exhibit 14.....	115

Petitioner's Exhibits Marked In Evidence:

Petitioner's Exhibit 7.....	12
-----------------------------	----

C E R T I F I C A T E

164

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 5th day of August, 2002.

Rosalie Lombardi

Rosalie Lombardi  
Transcription Plus II